

ORIGINAL HOUSE
BILL NO. HB0069

ENROLLED ACT NO. 23, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2019 GENERAL SESSION

AN ACT relating to sales tax; requiring marketplace facilitators to collect and remit sales taxes as specified; specifying relief for failure to collect and remit the tax; providing immunity for facilitators collecting the tax; providing definitions; specifying applicability; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 39-15-502 is created to read:

39-15-502. Marketplace facilitators.

(a) A marketplace facilitator shall be considered the vendor for each sale that the facilitator facilitates on its marketplace for a marketplace seller. Each marketplace facilitator shall:

(i) Be responsible for all obligations imposed under chapters 15 and 16 of this title;

(ii) Keep records and information as may be required by the department to ensure proper collection and remittance of sales tax.

(b) Subject to the limitations in W.S. 39-15-501(a), a marketplace facilitator shall collect and remit sales tax on all sales:

(i) The marketplace facilitator makes on its own behalf; and

(ii) The marketplace facilitator facilitates on behalf of all marketplace sellers to customers in Wyoming. The marketplace facilitator shall collect and remit sales tax

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on sales facilitated by the marketplace facilitator and sold into Wyoming regardless of whether the marketplace seller has a sales tax permit or otherwise would have been required to collect sales tax if the sale had not been facilitated by the marketplace facilitator.

(c) If a marketplace facilitator fails to collect or remit sales tax under subsection (b) of this section due to incorrect or insufficient information provided by the marketplace seller, the marketplace facilitator shall be relieved of liability for that failure to collect or remit the tax provided that the relief under this subsection shall not exceed five percent (5%) of the total sales tax due from sales made or facilitated in this state by the marketplace facilitator. If a marketplace facilitator is relieved of liability under this subsection, the marketplace seller or the purchaser shall be liable for any amount of uncollected, unpaid or unremitted tax due.

(d) No relief under subsection (c) of this section shall be authorized for sales made by a marketplace seller who is affiliated with the marketplace facilitator. Entities are affiliated under this subsection if:

(i) One (1) entity owns more than five percent (5%) of the other entity; or

(ii) Both entities are subject to the control of a common entity that owns more than five percent (5%) of each of the entities.

(e) The department shall solely audit the marketplace facilitator for sales made by marketplace sellers but facilitated by the marketplace facilitator. The department shall not audit marketplace sellers except to the extent the

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marketplace facilitator seeks relief under subsection (c) of this section.

(f) A class action shall not be maintained against a marketplace facilitator by or on behalf of purchasers arising from or in any way related to an overpayment of sales or use tax collected by the marketplace facilitator under this section, regardless of whether the action is characterized as a tax refund claim.

(g) As used in this section:

(i) "Marketplace" means any method through which a marketplace seller may sell or offer for sale tangible personal property, admissions or services which are subject to taxation under chapter 15 or 16 of this title for delivery into this state regardless of whether the marketplace seller has a physical presence in this state;

(ii) "Marketplace facilitator" means any person that facilitates a sale for a marketplace seller through a marketplace by:

(A) Offering for sale by a marketplace seller, by any means, tangible personal property, admissions or services which are subject to taxation under chapter 15 or 16 of this title for delivery into this state; and

(B) Directly, or indirectly through any agreement or arrangement with one (1) or more third parties, collecting payment from a purchaser and transmitting the payment to the marketplace seller, regardless of whether the person receives compensation or other consideration in exchange for facilitating the sale or providing any other service.

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(iii) "Marketplace seller" means a vendor who sells or offers for sale tangible personal property, admissions or services which are subject to taxation under chapter 15 or 16 of this title for delivery into this state through a marketplace that is owned, operated or controlled by a marketplace facilitator.

Section 2. W.S. 39-15-101(a)(xv) is amended to read:

39-15-101. Definitions.

(a) As used in this article:

(xv) "Vendor" means any person engaged in the business of selling at retail or wholesale tangible personal property, admissions or services which are subject to taxation under this article. "Vendor" includes a vehicle dealer as defined by W.S. 31-16-101(a)(xviii), ~~and~~ a remote seller to the extent provided by W.S. 39-15-501 and a marketplace facilitator to the extent provided by W.S. 39-15-502;

Section 3. No marketplace facilitator shall be required to collect or remit sales tax as provided in W.S. 39-15-502 on any sale made prior to the effective date of this act. Nothing in this section shall be deemed to apply to any taxes that are required to be collected or remitted under W.S. 39-15-501 prior to the effective date of this act.

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Section 4. This act is effective July 1, 2019.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk